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NO. 83-1872

In the Supreme Court of the United States

October Term, 1983

SOUTH FLORIDA CHAPTER of the ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., et al.,

Petitioners,

vs.

METROPOLITAN DADE COUNTY, FLORIDA, et al.,

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF RESPONDENTS METROPOLITAN DADE COUNTY, FLORIDA, ITS BOARD OF COUNTY COMMISSIONERS, COUNTY MANAGER, AND TRANSPORTATION COORDINATOR

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether studies, including a report of the United States Commission on Civil Rights, all of which detail the total lack of participation of Black-owned businesses in Dade County's economy, together with the county's own analysis which demonstrates the consistent underrepresentation of Black contractors in county public works contracts, constitute sufficient bases for a local legislative body's finding of past discrimination against Black contractors.

(2) Whether a local legislative body may adopt a race-conscious program for the purpose of remedying the present effects of past racial discrimination.

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STATEMENT OF THE CASE

(i) Course of proceedings and disposition below.

Petitioners are trade associations of non-Black contractors and subcontractors.[1] [App.43a]. They filed suit below challenging Dade County's authority to adopt a race conscious program which seeks to increase participation of Black-owned contractors and subcontractors in county contracts. They also challenged the county's decision under that program to set-aside the Earlington Heights Metrorail station contract for competition solely among Black-owned prime contractors and to require that the bidder make a good faith effort to involve Black-owned subcontractors in 50% of the dollar value of the contract work.

After final hearing, the district court issued a memorandum opinion containing extensive findings of fact and conclusions of law. *South Florida Chapter of the Associated General Contractors of America, Inc. v. Metropolitan Dade County, Florida*, 552 F. Supp. 909 (S.D. Fla. 1982). The district court struck down the set-aside, but upheld the subcontractor goal. [App.112a]. A declaratory judgment and permanent injunction were entered consistent with the court's opinion.

The county appealed the district court's ruling on the set-aside; the trade associations cross-appealed the

[1]Regarding the ethnicity of Petitioner's membership, the district court held: "Even at this date the plaintiff [South Florida Chapter of Associated General Contractors of America], general contractors, does not have a single Black member (a Black firm had been invited but had not accepted at the time of the final hearing)." [App.76a, n.13].

ruling on the subcontractor goal. The Court of Appeals for the Eleventh Circuit reversed the ruling on the set-aside and affirmed the ruling on the goal, thus upholding the county's program in full. *South Florida Chapter of the Associated General Contractors of America, Inc. v. Metropolitan Dade County, Florida*, 723 F.2d 846 (11th Cir. 1984).

(ii) **Statement of the facts.**

In the aftermath of the May, 1980, riots in Miami's Liberty City section, several investigations were undertaken by the county and other private and public entities into the underlying causes of these civil disturbances. [App.50a]. Among the factors evaluated were the present extent of Black business activity within the county generally and specifically in relation to doing business with Dade County. *Ibid.* The county study found a statistically significant disparity between the percentage of county contracts received by Black contractors (less than 1% of the total contracts awarded) and the percentage of the county's population that is Black (17%). [App.75a]. Cumulatively, these reports were the bases for the County Commission's legislative finding that Black contractors in Dade County had been the object of racial discrimination. [App.76a]. The district court specifically held that these findings of "*identified discrimination*" (emphasis by the court) were substantiated and that the county had the authority to act in response to such discrimination. [App.76a, 95a]. See p. 13, *infra*.

As a remedial program, the commission adopted Dade County Ordinance No. 82-67 which required a

review of *each* proposed construction contract to determine whether the addition of race conscious criteria, including goals and set-asides, to the bid specifications would foster participation of Black contractors and subcontractors in the *particular* contract work. The district court found that the objective of the county's program:

> ". . . was to remedy the present continuing effects of past racial discrimination and to take affirmative steps to halt the perpetuation of the vicious cycle in which fledgling Black contractors were unable to overcome past discrimination to compete equally with White contractors. The program's specific purpose was to remedy the disabling effects of discrimination that exist in county contracting." [App.75a]

Earlington Heights Station is the first contract to be reviewed under the ordinance.[2] The trial court determined that the county followed the ordinance's

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[2]As found by the district court:

> ". . . Metropolitan Dade County government is a multibillion dollar public concern that expends approximately 620 million dollars annually in outside contracting and enters into thousands of contracts with business enterprises both locally and nationally. These contracts range from inexpensive procurement contracts to multimillion dollar Metrorail transit station contracts." [App.57a].

The County engineer estimated that the cost of the Earlington Heights Station contract should not exceed $6,060,140. [App.70a, n.10].

procedures and that its decision to apply a set-aside and a goal were substantiated.[3] [App.71-2A, 80a].

Having thus found a compelling county interest in remedying the effects of such discrimination, the district court proceeded to determine whether the means selected by the county (a set-aside and a goal) were carefully tailored to accomplish such a remedial purpose. [App.95a]. The district court held that the set-aside provisions were not narrowly tailored and therefore invalid. The goals provisions were upheld.

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[3]At the time this case was considered by the district court, Dade County had spent ten years planning, designing, and building a billion-dollar rapid transit system for the metropolitan Miami area. [App.57a]. *None* of the *prime contractors* on the 44 existing construction and procurement contracts for Metrorail is Black-owned. Earlington Heights is the last of the system's 20 stations to be bid and is located entirely within Miami's Black community. [App.71-2a]. The district court noted that:

> ". . . The county desired to make extraordinary efforts to involve Black contractors in the completion of the north leg of the system located in large part in the local Black community. The Earlington Heights station became the focal point for applying the race conscious measures established by the county."
> [*Ibid.*]

The district court further found that the Earlington Heights Station contract is "a visible symbol of Black participation in the Metrorail system and county construction contracting in general." [Ap.109a].

The Court of Appeals reviewed the county's race-conscious program in light of the criteria expressed in the Court's opinions in *Bakke*[4] and *Fullilove*,[5] i.e.:

1. that the governmental body have the authority to adopt such legislation;

2. that adequate findings have been made to ensure that the governmental body is remedying the present effects of past discrimination rather than advancing one racial or ethnic group's interests over another; and

3. that the use of such classifications extend no further than the established need of remedying the effects of past discrimination. [App.10a]

As a result of its analysis, the Court of Appeals reversed the district court's ruling on set-asides and affirmed its ruling on goals.

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[4]*Regents of the University of Califonia v. Bakke*, 438 U.S. 265 (1978)

[5]*Fullilove v. Klutznick*, 448 U.S. 448 (1980)

REASONS FOR NOT GRANTING CERTIORARI

The Court in *Bakke*[6] and *Fullilove*[7] has already decided the federal questions applicable to this case, i.e.:

1. whether state and local legislative bodies are competent to make findings of past racial discrimination and to adopt remedial race-conscious measures designed to eliminate the effects of such discrimination; and

2. whether studies detailing the total lack of participation of the Black community in Dade County's economy, plus the consistent underrepresentation of Black-owned businesses in the award of county public works contracts, constitute sufficient bases for a finding of discrimination in the construction industry; and

3. whether set-asides and subcontract goals narrowly tailored to eliminate past discrimination in the construction industry are constitutionally permissible.

The Eleventh Circuit expressly recognized and applied the tests articulated by the Court in *Bakke* and *Fullilove*, and their application in this cause is fully consistent

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[6]*Regents of University of California v. Bakke*, 438 U.S. 265 (1978)

[7]*Fullilove v. Klutznick*, 448 U.S. 448 (1980)

with that of other Courts of Appeal. *Ohio Contractors Ass'n v. Keip*, 713 F.2d 167 (6th Cir. 1983).

I

Bakke involved a state race-conscious program designed to increase minority student enrollment at the Davis Medical School. Although the particular program in issue was struck down, a majority of the Court recognized that state and local governments have a compelling interest in eliminating the effects of past racial discrimination.

Thus, Justice Powell stated:

> ". . .The State certainly has a legitimate and substantial interest in ameliorating, or eliminating where feasible, the disabling effects of racial discrimination."
> 438 U.S. at 307.

Earlier in his opinion, Justice Powell cited with approval two cases involving racial preferences designed to rectify discrimination in the construction industry:

> ". . . Such preferences also have been upheld where a legislative or administrative body charged with the responsibility made determinations of past discrimination by the industries affected, and fashioned remedies deemed appropriate to rectify the discrimination. E.g., *Contractors Association of Eastern Pennsylvania v. Secretary of Labor*, 442 F.2d 159 (CA3), *cert. denied*, 404 US 854, 30 L.Ed. 2d 95, 92 S.Ct. 98 (1971); *Associated General*

> *Contractors of Massachusetts, Inc. v. Altshuler,* 490 F.2d 9 (CA1 1973), *cert. denied,* 416 US 957, 40 L.Ed.2d 307, 94 S.Ct. 1971 (1974). . . ." (last citation omitted) (footnote omitted) 438 U.S. at 301-2.

The *Altshuler* case referred to in the preceding quotation, involved Massachusett's imposition of minority hiring goals on state-funded construction contracts. The First Circuit held the state's race-conscious program was not violative of the Equal Protection Clause of the Fourteenth Amendment. In so holding, the court noted that Congress' policy in the area of affirmative action was "one of encouraging state cooperation and initiative in remedying racial discrimination." 490 F.2d at 15.

Justice Brennan (joined by Justices White, Marshall, and Blackmun) also spoke in *Bakke* to state and local government's competency to remedy racial discrimination.

> "The Court today, in reversing in part the judgment of the Supreme Court of California, affirms the constitutional power of Federal and State Governments to act affirmatively to achieve equal opportunity for all. . . . Government may take race into account when it acts not to demean or insult any racial group, but to remedy disadvantages cast on minorities by past racial prejudice, at least when appropriate findings have been made by judicial, legislative, or administrative bodies with competence to act in this area."
> 438 U.S. at 324-5.

Thus, five Justices in *Bakke* recognized the competence of state and local legislative bodies to make findings of past racial discrimination and to take appropriate remedial race-conscious steps to eliminate the effects of such discrimination.

In the instant case, the Eleventh Circuit determined that the Board of County Commissioners of Dade County was competent "to make findings of past discrimination and to enact remedial legislation." 723 F.2d at 852. [App.12a]. The court relied for its holding on the broad powers granted the County Commission under the Florida Constitution, Statutes, and the Dade County Home Rule Charter. *Ibid.* Those powers are set forth in the district court's opinion and specifically include the authority to:

> " 'a. Conduct studies of county population, . . . facilities, resources, and needs and other factors which influence the county's development, and on the basis of such studies prepare such . . . reports . . . for the . . . economic . . . development of the county.' Section 4.07.
>
> 'b. Make investigations of county affairs, inquire into the conduct, accounts, records, and transactions of any department or office of the county, and for these purposes require reports. . . .' Section 1.01A(20).
>
> 'c. Prepare and enforce comprehensive plans for the development of the county.' Section 1.01A(5).

'd. Use public funds for the purposes of promoting the development of the county. . . .' Section 1.01A(15).

'e. Provide and operate . . . public transportation systems.' Section 1.01A(2).

'f. Adopt such ordinances and resolutions as may be required in the exercise of its powers. . . .' Section 1.01A(22).

'g. Perform any other acts consistent with law which are required by this Charter or which are in the common interest of the people of the county.' Section 1.01A(23)"
552 F. Supp. at 934; [App. 93a-94a].

The district court further noted that under Florida law, "a county commission functions as a legislative body in making county policy and enacting local law." *Ibid.;* [App.94a].

Both the district court and the Eleventh Circuit observed that the County Commission relied on the findings of a number of independent investigations regarding the Black community's total lack of participation in Dade County's economic development. One such report was the June, 1982, report of The United States Commission on Civil Rights entitled, "Confronting Racial Isolation in Miami." 723 F.2d at 858; 552 F.Supp. at 919; [App.24a, 62a]. The United States Commission on Civil Rights is an agency established by Congress under P.L. 85-315, as amended, (42 U.S.C.A. §1975, *et seq.*) to:

"Study and collect information concerning . . . *discrimination* . . . because of race. . . .

* * *

Serve as a national clearinghouse for information in respect to *discrimination* . . . because of race. . . ." (emphasis supplied) 42 U.S.C.A. §1975c(a)(2) & (4)

The Commission on Civil Rights June, 1982, report at pages 25-26 found:

". . . Black exclusion from the economic renaissance [of Miami] translates into low earnings, high unemployment rates, reduced job opportunities, and the absence of capital formation and investment ventures. This lack of a black economic base, in either employment or ownership or a combination of both, has significant long-term implications for the black community. . . .

". . . Underlying the violence that exploded in May 1980 was a sense of the black community's inability to produce change or affect fate. Even now, two years after the violent civil disturbances, that sense of powerlessness remains. In the booming local economy, as the memory of civil disorders recedes, the interest, activities, and concern for the black community fade away."

The Commission report at pages vi-vii further cautioned:

> ". . . unless a *racially conscious effort* is made to overcome the social and economic disadvantages imposed on black Miamians and to offer them the opportunity to develop a prosperous community again, the present sense of alienation and frustration will continue to pervade black life in Dade county."
> (emphasis supplied)

Since Congress created the United States Commission on Civil Rights for the express purpose of examining and compiling evidence of racial discrimination, and since the Board of County Commissioners relied in substantial part on The Commission on Civil Rights' findings and its recommendation for a "racially conscious effort" in Dade County, any argument that the challenged program is not based on recommendations of a body with responsibility in the area of racial discrimination must fail.

II

Fullilove involved a provision of the Public Works Employment Act of 1977 which required that, absent an administrative waiver, ten percent of the grant funds for each federally-assisted local project must be expended with minority business enterprises. In upholding the provision, the Court discussed the nature of the legislative process and what constitutes a sufficient basis for a legislative finding of racial discrimination in the context of public works contracting.

The Chief Justice (joined by Justices White and Powell) stated:

> "With respect to the MBE provision, Congress had abundant evidence from which it could conclude that minority businesses have been denied effective participation in public contracting opportunities by procurement practices that perpetuated the effects of prior discrimination. Congress, of course, may legislate without compiling the kind of 'record' appropriate with respect to judicial or administrative proceedings. Congress had before it, among other data, evidence of a long history of marked disparity in the percentage of public contracts awarded to minority business enterprises. This disparity was considered to result not from any lack of capable and qualified minority businesses, but from the existence and maintenance of barriers to competitive access which had their roots in racial and ethnic discrimination and which continue today, even absent any intentional discrimination or other unlawful conduct. Although much of this history related to the experience of minority businesses in the area of federal procurement, there was direct evidence before the Congress that this pattern of disadvantage and discrimination existed with respect to state and local construction contracting as well."
> 448 U.S. at 477-8

The Court in *Fullilove* expressly found that various studies and statistics which compared the composition

of the population to the percentage of federal contracts that went to minorities justified the ten percent set-aside imposed by the Public Works Employment Act (PWEA) of 1977. Thus, the Chief Justice noted that the House sponsor of the Act's set-aside provisions:

> ". . . cited the marked statistical disparity that in fiscal year 1976 less than 1% of all federal procurement was concluded with minority business enterprises although minorities comprised 15-18% of the population."
> *Id.* at 459.

Additionally, the Chief Justice quoted from a report of the House Sub-committee on Small Business Administration Oversight and Minority Enterprise which found:

> " '. . . While minority persons comprise about 16 percent of the Nation's population, of the 13 million businesses in the United States, only . . . 3.0 percent are owned by minority individuals. . . ."
> *Id.* at 465.

Justice Powell also stated:

> "I believe that a court must accept as established the conclusion that purposeful discrimination contributed significantly to the small percentage of federal contracting funds that minority

business enterprises have received."
Id. at 506.[8]

Finally, Justice Marshall (joined by Justices Brennan and Blackmun) found:

> "Congress had a sound basis for concluding that minority-owned construction enterprises, though capable, qualified, and ready and willing to work, have received a disproportionately small amount of public contracting business because of the continuing effects of past discrimination."
> *Id.* at 520.

Similarly, in the instant case, the district court found from the evidence presented there had been:

> " . . . *identified discrimination* against Dade County Black contractors at some point prior to the county's present affirmative action program. In reaching this conclusion the Court has relied on the following points:

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[8]As noted above, Justice Powell relied in *Bakke* (at 301-2) on the First Circuit's decision in *Associated General Contractors of Massachusetts v. Altshuler*, 490 F.2d 9 (1st Cir. 1973) for the proposition that racial preferences had only been upheld where a prior finding of discrimination had been made. In *Altshuler*, the disparity between the percentage of Boston's population that were minorities (23%) and the percentage of union membership that were minorities (4%) was held to be a sufficient basis to support Massachusett's finding of racial discrimination in the construction industry.

a. The record indicates that less than one percent of Dade County contractors are Black even though the overall Black population exceeds seventeen percent. The only plausible explanation for this statistical disparity is that Black contractors in Dade County continue to suffer from the present effects of past discrimination against them.

b. The construction industry nationally has been particularly slow to open itself to racial minorities. '[R]acial discrimination in the construction trades on racial grounds has been found so often by the courts as to make it a proper subject for judicial notice.' *Local Union No. 35 etc. v. City of Hartford*, 625 F.2d 416, 422 (2d Cir.1980), *cert. denied*, 453 U.S. 913, 101 S.Ct. 3148, 69 L.Ed.2d 997 (1981).

c. The extremely low percentage of county contracts awarded to Blacks in the past. While to a certain extent this is explainable by the low percentage of Black contractors available in the area, to a larger extent, this low percentage is a present effect of past discrimination against Black contractors."
(emphasis by the Court) (footnotes omitted) 552 F.Supp. at 926; [App. 76-7a]

The Eleventh Circuit further noted that the County Commission's actions were based on " 'reliable, substantial information compiled by independent investigations' " which revealed that past discriminatory practices had impeded the development of Black-owned businesses,

resulting in an economic disparity between Black and other groups in the county. 723 F.2d at 853; [App.12a].

Petitioner has argued at each stage of these proceedings that there is an insufficient basis for the County Commission's findings of discrimination. On this point, the district court held:

> "Contrary to Plaintiffs' contention, the information contained in these reports do provide a substantial basis for the actions taken by the county commission, including the implementation of race-conscious measures and the Court made a finding to this effect. Indeed, plaintiffs do not even suggest what additional better information the commission could have relied on in making its findings that Blacks have not proportionately shared in the county's economic development."
> (footnote omitted) 552 F.Supp. at 934; [App.95a]

III

Fullilove upheld the authority of Congress to utilize a ten percent set-aside for the purpose of eliminating past discrimination against minority businesses in the construction industry. A majority of the Court held that, having made sufficient findings of past discrimination, the legislature's choice of remedy to redress discrimination must be upheld where that remedy is narrowly tailored to accomplish the legislative objectives. Thus, the Chief Justice (joined by Justices White and Powell) stated that a race-conscious program must be

> ". . . narrowly tailored to achieve its objectives, subject to continuing evaluation and reassessment; administration of the programs must be vigilant and flexible; and, when such a program comes under judicial review, courts must be satisfied that the legislative objectives and projected administration give reasonable assurance that the program will function within constitutional limitations."
> 448 U.S. at 490

Similarly, Justice Marshall (joined by Justices Brennan and Blackmun) held the determinative issues to be:

> ". . . whether racial classifications designed to further remedial purposes serve important governmental objectives and are substantially related to achievement of those objectives."
> *Id.* at 519

The Eleventh Circuit recognized and expressly applied the "narrowly tailored" test adopted in *Fullilove* to the instant case:

> ". . . We must next consider whether the Dade County ordinance facially incorporates sufficient safeguards to ensure that it is narrowly tailored to its legitimate objectives of redressing past discrimination. After a careful review of the legislative provisions, we find that adequate safeguards exist to uphold the ordinance's constitutionality."
> 723 F.2d at 853; [App.12a]

The Dade County ordinance required the County Manager to establish an administrative procedure for review of each proposed county construction contract to determine whether the inclusion of race-conscious measures in the bid specifications will foster participation of "qualified Black contractors and subcontractors" in the contract work. *Id.* at 858; [App.25a]. The administrative procedure adopted required each county department to develop a recordkeeping system as to the dollar value of construction contracts anticipated and a goal for Black contractor participation for that fiscal year. Regs. 1.01; [App.27-8a]. In the course of developing contract specifications for each capital project, the department must analyze the trades classifications required for the project and the number and types of Black-owned firms likely to be available to participate in the contract. Regs. 1.02; [App.28a]. In light of this analysis, the department is required to make a suggestion as to whether the contract is appropriate for set-aside, subcontractor goals; or whether "no race-conscious requirements" should be imposed. Regs. 1.03; [App. 28a]. Next, the department's suggestions are reviewed by a three-member Contract Review Committee which formulates a recommendation on the advisability of the inclusion of race-conscious measures for the construction contract in question, prior to preparation of the contract specifications. Regs. 2.04 and 2.06; [App. 29a]. The recommendation is then forwarded to the Board of County Commissioners.

The ordinance and regulations also set out the criteria to guide the reviewing bodies as to whether goals or set-asides are appropriate. Subcontractor goals must be based on estimates of the project's subcontracting opportunities and on the "availability and capability of

Black subcontractors to do the work." Ord. 10-38(d)(1); Regs. 4.02 and 4.03; [App.25a, 30a]. When goals are utilized, the low bidder, as a condition of award, must either meet the goal or demonstrate that he made every reasonable effort to meet the goal and, notwithstanding such effort, was unable to do so. Ord. 10-38(d)(1); [App. 25a]. The latter procedure provides a means for waiver where the goal is unattainable. A set-aside may be used only upon findings that at least three Black prime contractors "with capabilities consistent with the contract" are available and the County Commission specifically determines by two-thirds (⅔) vote that the set-aside is in the best interest of the County. Ord. 10-38(d)(2); Reg. 5.01; [App.26a, 30-1a].

In addition to the three-tiered review of each construction contract where race-conscious remedies are proposed, the entire program is also subject to periodic review and assessment. The County Commission must annually reassess the continuing desirability and viability of the program. Ord. §10-38(e); [App.26a]. This reassessment is in part based upon an annual report by the County Manager reporting the percentage value of county construction contracts awarded that year to Black contractors and subcontractors. *Ibid.* The County Manager is also charged with the duty of continually monitoring the program's use and periodically reporting his findings. Resol. §3; [App.23a].

Dade County's program is not as exclusionary as the program in issue in *Bakke*, nor is it as arbitrary as the ten percent set-aside upheld in *Fullilove*.

In *Bakke*, the class slots reserved under the Davis Medical School's special admissions program were limited

solely to minority students. As a result, non-minority students were totally excluded from consideration for these positions. Under Dade County's program, however, the application of a set-aside does not preclude white and other non-Black contractors from participating in the construction contract. This is so because the Dade County Ordinance defines a "Black contractor" in terms of ownership and control by Blacks of 51% of the business. 723 F.2d 858; [App.24-5a]. Thus, non-Black contractors may participate by having up to 49% ownership or control of the business, by joint venturing with a Black prime contractor and by bidding successfully for subcontracts awarded by Black prime contractors. The district court specifically noted that non-Black contractors could participate in a set-aside contract through joint venturing, as evidenced by the fact that one of the bidders on the very contract in issue was a joint venture which included a non-Black contractor.

> ". . . While non-Black businesses could have participated in The Earlington Heights project as part of a joint venture and, in fact one of the bidders appears to be a joint venture, a joint venture would require that the Black-owned firm have at least fifty-one percent control over the project."
> 552 F. Supp. at 926; [App.78a]

See also, 552 F. Supp. 935, n. 38 [App.96a].

In *Fullilove*, a blanket and automatic 10% set-aside was imposed on all contracts with provision for administrative waiver after the fact. Under Dade County's program, each contract is individually reviewed in light of the unique characteristics of the particular project

to determine whether race-conscious measures are even appropriate to that specific contract. The county's procedures require that an in-depth analysis of the availability and capability of qualified Black contractors and subcontractors to do the precise work envisioned by the contract be made *before* a goal or set-aside can even be recommended. Where a goal is applied, the percentage is not fixed, but rather is set based on considerations relevant to the particular contract. Set-asides may only be applied where there are "sufficient licensed Black contractors to afford effective competition for the contract." Ord. §10-38(3)(d)(2); [App.26a]. The County Commission must then determine by two-thirds (⅔) vote whether a set-aside is in the best interests of the county. Considerations relevant to waiver are thus built into the county's initial review procedure and are applied on a contract-specific basis to each contract. In the instant case, the district court found that the county followed the procedures required by the ordinance and that the county's findings thereunder as related to the Earlington Heights Station contract were substantiated. [App.71a-72a].

In light of all the above, the Eleventh Circuit found:

> ". . . That these extensive review provisions provide adequate assurances that the County's program will not be used to an extent nor continue in duration beyond the point necessary to redress the effects of past discrimination.

* * *

Our conclusions on the adequacy of the program's safeguards are premised on the understanding that the review process, both for individual contracts and the entire program, will be conducted in a thorough and substantive manner. If the process is carried out in a conclusory fashion or extended beyond its legitimate purpose of redressing the effects of past discrimination, the plaintiffs may of course renew their challenge to the constitutionality of the County's program. We decline to hold the ordinance facially unconstitutional, however, merely on the speculation that the County will not vigorously undertake implementation of the review procedure."
Id. at 854; [App.14-15a]

CONCLUSION

For the reasons stated and upon the authorities cited, the petition for writ of certiorari should be denied.

Respectfully submitted,

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